

**BEFORE THE ARIZONA MEDICAL BOARD**

In the Matter of

**MARTIN BURNETT, M.D.**

Holder of License No. 14738  
For the Practice of Allopathic Medicine  
In the State of Arizona.

Case No. MD-05-0145A

**CONSENT AGREEMENT FOR  
DECREE OF CENSURE AND  
PROBATION**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Martin Burnett, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent acknowledges that he has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement.") Respondent acknowledges that he understands he has the right to consult with legal counsel regarding this matter and has done so or chooses not to do so.

2. Respondent understands that by entering into this Consent Agreement he voluntarily relinquishes any rights to a hearing or judicial review in State or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. Respondent acknowledges and understands that this Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in this State or any other  
2 state or federal court.

3 5. Respondent acknowledges and agrees that, although the Consent  
4 Agreement has not yet been accepted by the Board and issued by the Executive Director,  
5 Respondent may not revoke his acceptance of the Consent Agreement. Respondent may  
6 not make any modifications to the document. Any modifications to this original document  
7 are ineffective and void unless mutually approved by the parties.

8 6. Respondent further understands that this Consent Agreement and Order,  
9 once approved and signed is a public record that may be publicly disseminated as a  
10 formal action of the Board and will be reported to the National Practitioner's Data Bank  
11 and will be reported to the Arizona Medical Board's website.

12 7. If any part of the Consent Agreement is later declared void or otherwise  
13 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in  
14 force and effect.

15   
16 MARTIN BURNETT, M.D.

Date 8/3/05

**FINDINGS OF FACT**

1  
2 1. The Board is the duly constituted authority for the regulation and control of  
3 the practice of allopathic medicine in the State of Arizona.

4 2. Respondent is the holder of License No. 14738 for the practice of allopathic  
5 medicine in the State of Arizona.

6 3. The Board initiated case number MD-05-0145A after receiving a report from  
7 a Phoenix, Arizona hospital ("Hospital") that Respondent, an anesthesiologist, had been  
8 summarily suspended, effective February 7, 2005.

9 4. Hospital reported that on the morning of February 7, 2005 Respondent  
10 presented to the hospital, interviewed his patient, changed into scrubs and prepared for  
11 his case. The patient's husband reported to Hospital staff that Respondent smelled of  
12 alcohol on his person. Hospital cancelled Respondent's case and requested Respondent  
13 to undergo alcohol drug testing. The alcohol drug test was positive for alcohol at .142,  
14 which supported Hospital's summary suspension.

15 5. Respondent stated that he consumed a large amount of alcohol the day  
16 before, but on that morning, he did not feel impaired.

17 6. The standard of care required Respondent present to the Hospital prepared  
18 to administer anesthesia in a safe and effective manner.

19 7. Respondent fell below the standard of care because he presented to the  
20 Hospital under the influence of alcohol, a state in which he could not administer  
21 anesthesia in a safe and effective manner.

22 8. The patient was subject to potential harm because, if Hospital had not  
23 discovered Respondent's impairment, she would have been subjected to anesthesia under  
24 the care of an impaired physician.  
25

1           9.     On February 10, 2005 Respondent agreed to an Interim Consent Agreement  
2 for Practice Restriction and Inpatient Residential Treatment providing that he not practice  
3 medicine until further order of the Board.

4           10.    Respondent was admitted for treatment on February 15, 2005 and  
5 successfully completed treatment on March 16, 2005.

6           11.    On March 21, 2005 Respondent entered into an Interim Consent Agreement  
7 for participation in the Board's Monitored Aftercare Program ("MAP"). However, since the  
8 Inpatient treatment center's recommendations were not yet available, Respondent  
9 remained under the February 10, 2005 Interim Consent Agreement for practice restriction.

10          12.    On March 30, 2005 Board staff received the treatment records from the  
11 inpatient treatment facility with a diagnosis of alcohol dependence. The treatment facility  
12 recommended that Respondent be released to work with no restrictions.

13          13.    On April 7, 2005 the Interim Consent Agreement for practice restriction was  
14 vacated.

15          14.    The underlying investigation into the notification of Hospital's summary  
16 suspension is complete and Respondent has agreed to enter a consent agreement for  
17 Probation.

#### 18                               CONCLUSIONS OF LAW

19          1.     The Arizona Medical Board possesses jurisdiction over the subject matter  
20 hereof and over Respondent.

21          2.     The Board has received substantial evidence supporting the Findings of Fact  
22 described above and said findings constitute unprofessional conduct or other grounds for  
23 the Board to take disciplinary action.

3. The conduct and circumstances above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) - ("[h]abitual intemperance in the use of alcohol or habitual substance abuse.")

4. The conduct and circumstances above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) - ("[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.")

### ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that:

1. Respondent is issued a Decree of Censure for showing up at surgery under the influence and for the potential for patient harm.

2. Respondent placed on Probation for five years with the following terms and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before June 15, 2005.

b. Respondent shall participate in the Board's Monitored Aftercare Program pursuant to the following:

1. Participation. Respondent shall promptly enroll in and participate in the Monitored Aftercare Program ("MAP") for the treatment and rehabilitation of physicians who are impaired by alcohol or drug abuse. Respondent shall remain in MAP for five years from the effective date of this Order. Respondent's participation in MAP may be unilaterally terminated with or without cause at the Board's discretion at any time after the

1 issuance of this Order.

2       **2.     Group Therapy.** Respondent shall attend MAP's group therapy sessions  
3 one time per week for the duration of this Order, unless excused by the MAP group  
4 therapist for good cause such as illness or vacation. Respondent shall instruct the MAP  
5 group therapist to release to the Board, upon its request, all records relating to  
6 Respondent's treatment, and to submit monthly reports to the Board regarding attendance  
7 and progress. The reports shall be submitted on or before the 10th day of each month.

8       **3.     12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-  
9 step meetings or other self-help group meetings appropriate for substance abuse and  
10 approved by the Board, for a period of ninety days beginning not later than either (a) the  
11 first day following Respondent's discharge from chemical dependency treatment or (b) the  
12 date of this Order.

13       **4.** Following completion of the ninety meetings in ninety days, Respondent shall  
14 participate in a 12-step recovery program or other self-help program appropriate for  
15 substance abuse as recommended by the MAP group therapist and approved by the  
16 Board. Respondent shall attend a minimum of three 12-step or other self-help program  
17 meetings per week.

18       **5.     Board-Approved Primary Care Physician.** Respondent shall promptly  
19 obtain a primary care physician and shall submit the name of the physician to Board Staff  
20 in writing for approval. The Board-approved primary care physician ("PCP") shall be in  
21 charge of providing and coordinating Respondent's medical care and treatment. Except in  
22 an *Emergency*, Respondent shall obtain medical care and treatment only from the PCP  
23 and from health care providers to whom the PCP refers Respondent from time to time.  
24 Respondent shall request that the PCP document all referrals in the medical record.  
25 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and

1 provide a copy of this Order to that physician. Respondent shall also inform all other  
2 health care providers who provide medical care or treatment that Respondent is  
3 participating in the Board's rehabilitation program.

4       6.     Medication. Except in an *Emergency*, Respondent shall take no *Medication*  
5 unless the PCP or other health care provider to whom the PCP makes a referral  
6 prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.

7       7.     If a controlled substance is prescribed, dispensed, or is administered to  
8 Respondent by any person other than PCP, Respondent shall notify the PCP in writing  
9 within 48 hours. The notification shall contain all information required for the medication  
10 log entry specified in paragraph 8. Respondent shall request that the notification be made  
11 a part of the medical record. This paragraph does not authorize Respondent to take any  
12 *Medication* other than in accordance with paragraph 6.

13       8.     Medication Log. Respondent shall maintain a current legible log of all  
14 *Medication* taken by or administered to Respondent, and shall make the log available to  
15 the Board and its Staff upon request. For *Medication* (other than controlled substances)  
16 taken on an on-going basis, Respondent may comply with this paragraph by logging the  
17 first and last administration of the *Medication* and all changes in dosage or frequency. The  
18 log, at a minimum, shall include the following:

- 19       a.     Name and dosage of *Medication* taken or administered;
- 20       b.     Date taken or administered;
- 21       c.     Name of prescribing or administering physician;
- 22       d.     Reason *Medication* was prescribed or administered.

23 This paragraph does not authorize Respondent to take any *Medication* other than in  
24 accordance with paragraph 6.

25       9.     No Alcohol or Poppy Seeds. Respondent shall not consume alcohol or

1 any food or other substance containing poppy seeds or alcohol.

2       **10. Biological Fluid Collection.** During all times that Respondent is physically  
3 present in the State of Arizona and such other times as Board Staff may direct,  
4 Respondent shall promptly comply with requests from Board Staff, the MAP group  
5 therapist, or the MAP Director to submit to witnessed biological fluid collection. If  
6 Respondent is directed to contact an automated telephone message system to determine  
7 when to provide a specimen, Respondent shall do so within the hours specified by Board  
8 Staff. For the purposes of this paragraph, in the case of an in-person request, "promptly  
9 comply" means "immediately". In the case of a telephonic request, "promptly comply"  
10 means that, except for good cause shown, Respondent shall appear and submit to  
11 specimen collection not later than two hours after telephonic notice to appear is given.  
12 The Board in its sole discretion shall determine good cause.

13       **11.** Respondent shall provide Board Staff in writing with one telephone number  
14 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis  
15 to submit to biological fluid collection. For the purposes of this section, telephonic notice  
16 shall be deemed given at the time a message to appear is left at the contact telephone  
17 number provided by Respondent. Respondent authorizes any person or organization  
18 conducting tests on the collected samples to provide testing results to the Board and the  
19 MAP director.

20       **12.** Respondent shall cooperate with collection site personnel regarding  
21 biological fluid collection. Repeated complaints from collection site personnel regarding  
22 Respondent's lack of cooperation regarding collection may be grounds for termination  
23 from the program.

24       **13. Payment for Services.** Respondent shall pay for all costs, including  
25 personnel and contractor costs, associated with participating in the Monitored Aftercare

Program at time service is rendered, or within 30 days of each invoice sent to Respondent.

14. **Examination.** Respondent shall submit to mental, physical, and medical competency examinations at such times and under such conditions as directed by the Board to assist the Board in monitoring Respondent's ability to safely perform as a physician and Respondent's compliance with the terms of this Order.

15. **Treatment.** Respondent shall submit to all medical, substance abuse, and mental health care and treatment ordered by the Board, or recommended by the MAP Director.

16. **Obey All Laws.** Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in the State of Arizona.

17. **Interviews.** Respondent shall appear in person before the Board and its Staff and committees for interviews upon request, upon reasonable notice.

18. **Address and Phone Changes, Notice.** Respondent shall immediately notify the Board in writing of any change in office or home addresses and telephone numbers. Respondent shall provide Board Staff at least three business days advance written notice of any plans to be away from office or home when such absence would prohibit Respondent from responding to an order to provide a biological fluid specimen or to communications from the Board. The notice shall state the reason for the intended absence from home or office, and shall provide a telephone number that may be used to contact Respondent.

19. **Relapse, Violation.** In the case of chemical dependency relapse by Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent shall promptly enter into an Interim Consent Agreement that requires, among other things, that Respondent not practice medicine until such time as Respondent successfully completes an inpatient or residential treatment program for chemical dependency

1 designated by the Board or Staff and obtains affirmative approval to return to the practice  
2 of medicine. Prior to approving Respondent's request to return to the practice of medicine,  
3 Respondent may be required to submit to witnessed biological fluid collection, undergo  
4 any combination of physical examination, psychiatric or psychological evaluation and/or  
5 successfully pass the special purpose licensing examination or the Board may conduct  
6 interviews for the purpose of assisting it in determining Respondent's ability to safely  
7 return to the practice of medicine. **In no respect shall the terms of this paragraph**  
8 **restrict the Board's authority to initiate and take disciplinary action for violation of**  
9 **this Order.**

10 **20. Notice Requirements.**

11 (A) Respondent shall immediately provide a copy of this Order to all employers and  
12 all hospitals and free standing surgery centers at which Respondent currently has  
13 privileges. Within 30 days of the date of this Order, Respondent shall provide the Board  
14 with a signed statement of compliance with this notification requirement. Upon any  
15 change in employer or upon the granting of privileges at additional hospitals and free  
16 standing surgery centers, Respondent shall provide the employer, hospital or free standing  
17 surgery center with a copy of this Order. Within 30 days of a change in employer or upon  
18 the granting of privileges at additional hospitals and free standing surgery centers,  
19 Respondent shall provide the Board with a signed statement of compliance with this  
20 notification requirement.

21 (B) Respondent is further required to notify, in writing, all employers, hospitals and  
22 free standing surgery centers at which Respondent currently has or in the future gains  
23 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in  
24 violation of this Order and/or entry into a treatment program. Within seven days of any of  
25 these events Respondent shall provide the Board written confirmation of compliance with

1 this notification requirement.

2 (C) Respondent shall immediately submit to the Board under penalty of perjury, on  
3 a form provided by the Board, the name(s) and address(es) of all employers and all  
4 hospitals and free standing surgery centers at which Respondent currently holds privileges  
5 to practice. Respondent is further required to, under penalty of perjury, on a form provided  
6 by the Board, immediately notify the Board of any changes in employment and of any  
7 hospitals and free standing surgery centers at which Respondent gains privileges after the  
8 effective date of this Order.

9 21. **Public Record.** This Order is a public record.

10 22. **Out-of State.** In the event Respondent resides or practices as a physician in  
11 a state other than Arizona, Respondent shall participate in the rehabilitation program  
12 sponsored by that state's medical licensing authority or medical society. Respondent shall  
13 cause the other state's program to provide written reports to the Board regarding  
14 Respondent's attendance, participation, and monitoring. The reports shall be due on or  
15 before the 15th day of March and September of each year, until the Board terminates this  
16 requirement in writing.

17 23. This Order supersedes all previous consent agreements and stipulations  
18 between the Board and Respondent.

19 24. The Board retains jurisdiction and may initiate new action based upon any  
20 violation of this Order.

## 21 DEFINITIONS

22 "**Medication**" means "prescription-only drug, controlled substance, and over-the  
23 counter preparation, other than plain aspirin and plain acetaminophen."

24 "**Emergency**" means "a serious accident or sudden illness that, if not treated  
25 immediately, may result in a long-term medical problem or loss of life."

This Order is the final disposition of case number MD-05-0145A.

DATED this 6 day of July, 2005.

ARIZONA MEDICAL BOARD



By Amanda Bell  
TIMOTHY C. MILLER, J.D.  
Executive Director

ORIGINAL of the foregoing filed this  
7 day of July, 2005 with:

The Arizona Medical Board  
9545 East Doubletree Ranch Road  
Scottsdale, Arizona 85258

Executed copy of the foregoing  
mailed this  
7 day of July, 2005, to:

Martin Burnett, M.D.  
Address of Record.

Patricia Reynolds  
Quality Assurance